C.R.No.589/99

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CIVIL REVISION PETITION NO.589/1999

Kare

Versus

Brijendra Singh

DATE OF ORDER :: 06/12/2006

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. Anil Upman, for petitioner
Mr. Ranvir Singh, for respondent

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Instant revision petition has been filed by the defendant-petitioner against the order dated 24th February, 1999 and so also of the learned trial Judge dated 26th May, 1994 whereby both the courts below have rejected his application filed under O.9 R.13 CPC whereby he is seeking for setting aside the ex-parte decree dated 16th December, 1985.

Non-petitioner-plaintiff filed a suit for recovery of sum of Rs.18,000/- in the year 1983. After notices were considered to be served upon the petitioner-defendant, no one appeared, thereafter, ex-parte proceedings were initiated against him. In pursuance thereof, ex-parte money decree was passed against the petitioner on 16th December, 1985. Petitioner filed application under O.9 R.13 CPC along with application u/s.5 of the Limitation Act for setting aside the ex-parte decree dated 16th

December, 1985, on 29th March, 1991. Petitioner submits that it is within limitation, which was computed from the date of knowledge, but it has nowhere been disclosed by him that he is seeking condonation of delay in filing application under O.9 R.13 CPC.

Learned trial Judge after taking into consideration the material which has come on record and so also evidence which was led by the petitioner in support thereof, of which extensive reference has been made in Para 11 of the order impugned, was not satisfied with the explanation and so also signatures in the voter list seeking permission for setting aside the ex-parte decree dated 16th December, 1985. Consequently, application was rejected by the learned trial Judge vide order impugned dated 26th May, 1994. Against which, petitioner preferred appeal, which too was rejected vide order dated 24th February, 1999. Against which, the petitioner preferred the present revision petition.

Counsel for petitioner vehemently contends that the notices were earlier sent for service through registered post, but when neither notice nor AD was received, the learned trial Judge passed order on 6th February, 1984 treating not to be sufficient service upon him. Both the courts below proceeded in holding sufficient service upon the petitioner, which is an apparent illegality committed by both the courts below and thus, no error was committed by the petitioner in filing application for setting

aside the judgment and decree only when it came to his knowledge along with application u/s.5 of the Limitation Act. Thus, finding recorded by both the courts below deserves to be set aside.

I have heard the counsel and perused the finding recorded under the order impugned.

Learned trial Judge has considered and taken note of with respect to the order passed in regard to service upon the petitioner and proceeded thereafter. It is submitted that receipt of post office was placed on record and fresh notices were also sent and presumption of service was drawn after expiry of 30 days from the the date fresh notices were sent and accordingly, recorded finding of sufficient service upon the petitioner. Learned Appellate Court has also appreciated the finding of fact and concurred with the same. The factual statement made by the counsel for petitioner about service of notice is finding of fact. Both the courts below have recorded concurrent finding.

I do not find any illegality committed by the learned trial Judge or by the learned First Appellate Court in recording such finding based on material on record.

Consequently, the present revision petition fails and is hereby dismissed.

[AJAY RASTOGI],J.

FRBOHRA,JR.P.A.